



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

FEB 28 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

Article number: 7005 3110 0000 5939 6179

Dave Alexander Tirri
Director of Marketing/ Owner
Caribbean Airport Facilities, Inc.
150 Road Sector Central, Suite 3
Luis Muñoz Marin International Airport, Cargo Area
Carolina, Puerto Rico 00979

Re: Caribbean Airport Facilities, Inc.
RCRA § 7003 Order on Consent, **Docket No. 02-2010-7301**
Subsurface Investigation Plan

Dear Mr. Tirri:

The Environmental Protection Agency has reviewed the March 2012 revised Subsurface Investigation Plan (SIP) submitted on your behalf by Fernando L. Rodriguez, P.E., by letter dated March 23, 2012 pursuant to Section VI of the above referenced Order on Consent (AOC). The SIP is hereby approved and implementation should begin immediately subject to the timetable therein.

If you have any questions, please contact myself at (212) 637-4067.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Meghan La Reau".

Meghan La Reau
Project Coordinator

cc: Ms. Lydia Lizarribar-Masini, Esq.
Counsel for the Caribbean Air Facilities, Inc.
14 O'Neill St. Suite A
Hato Rey, Puerto Rico 00918



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REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

JAN 23 2014

CERTIFIED MAIL
RETURN RECEIPT REQUESTED
7005 3110 0000 5939 5882

Jean Tirri
Vice President
Caribbean Airport Facilities, Inc.
150 Road Sector Central, Suite 3
Luis Muñoz Marin International Airport, Cargo Area
Carolina, Puerto Rico 00979

Re: Caribbean Airport Facilities, Inc. (CAF)
RCRA § 7003 Order on Consent, Docket No. 02-2010-7301
Valve Box Replacement Completion

Dear Ms. Tirri:

EPA has received and reviewed your December 11, 2013 letter and final report on the completed valve box replacement.

Pursuant to Paragraph 70 of the RCRA § 7003 Order on Consent, EPA is hereby notifying CAF that the valve box replacement outlined in Paragraph 33 of the Order has been completed satisfactorily.

If there are any questions regarding this matter, please contact myself at (212) 637-4067 or your legal counsel may contact Lourdes del Carmen Rodriguez, Esq., of the Office of Regional Counsel at (787) 977-5819.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Meghan La Reau".

Meghan La Reau
Project Coordinator

cc: Ms. Lydia Lizarribar-Masini, Esq.
Counsel for the Caribbean Air Facilities, Inc.
14 O'Neill St. Suite A
Hato Rey, Puerto Rico 00918

Fernando L. Rodriguez
Fernando L. Rodriguez, P.E. & Associates
PO Box 193430
San Juan, PR 00919-3430

bcc: Meghan La Reau, DECA-RCB

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2

In the Matter of:

Caribbean Airport Facilities, Inc.,

Respondent

Proceeding Under Section 7003 of the Solid
Waste Disposal Act, as amended,
42 U.S.C. § 6973

ADMINISTRATIVE ORDER
ON CONSENT

Docket No. RCRA-02-2010-7301

I. JURISDICTION

1. This Administrative Order on Consent (the "Order") is issued pursuant to the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984, 42 U.S.C. § 42 U.S.C. § 6973 (collectively referred to hereinafter as "RCRA" or "the Act"). The authority vested in the Administrator has been duly delegated to the Regional Administrator of EPA Region 2 by EPA Delegation No. 8-22-C, dated May 11, 1994.

2. The Puerto Rico Ports Authority ("PRPA"), a public corporation of the Commonwealth of Puerto Rico, created by Act No. 125, approved on May 7, 1942, as amended, is the owner and operator of the Luis Muñoz Marín International Airport (the "Facility" or the "LMMIA"), located in Baldorioty de Castro Avenue, Isla Verde, Carolina, Puerto Rico. Caribbean Airport Facilities, Inc., is a current PRPA lessee, and is the owner of certain portions of the LMMIA hydrant fuel system.

3. This Order on Consent with EPA is entered into voluntarily by Caribbean Airport Facilities, Inc., (the "Respondent"). This Order on Consent documents the commitment of Respondent to implement certain actions as provided by this Order. By signing this Order, Respondent agrees to undertake all actions required by the terms and conditions of this Order, and consents to and shall not contest the EPA's jurisdiction to issue and, if necessary, enforce this Order and shall not contest the terms of this Order.

4. Notice of the issuance of this Order has been provided to the Government of the Commonwealth of Puerto Rico, pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a).

II. PARTIES BOUND

5. This Order shall apply to and be binding upon the Respondent and upon its agents, successors and assigns. The Respondent shall provide a copy of this Order to each contractor hired to perform work pursuant to this Order and to each person representing Respondent with respect to such work within thirty (30) calendar days of the effective date of this Order or on the date such services are retained, whichever date occurs later. Respondent shall condition all contracts entered hereunder upon performance of the work in conformity to the terms of this Order. Respondent or its contractors shall provide written notice of the Order to all subcontractors hired to perform any portion of the work required by this Order.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

6. PRPA, a public corporation of the Commonwealth of Puerto Rico, owns and operates the LMMIA, an air transportation facility.

7. Caribbean Airport Facilities, Inc., ("CAF") is a corporation organized under the laws of the Commonwealth of Puerto Rico, and is the owner of a portion of the LMMIA hydrant fuel system under a lease agreement amendment with PRPA dated January 4, 1994, with a term of twenty-five years and provisions for two five-year options.

8. Respondent is a "person," as that term is defined at Section 1004(15) of the Act, 42 U.S.C. § 6903(15).

9. The Facility comprises approximately one thousand acres situated on the Isla Verde sector of the densely populated municipality of Carolina, Puerto Rico. The Facility has been in operation since the 1950s, and serves as the major commercial airport for Puerto Rico, as well as an international commercial hub for Caribbean and Central American air traffic. The Puerto Rico Air National Guard ("PRANG") occupies approximately 44 acres at the Eastern portion of the Facility.

10. The LMMIA was constructed on artificial fill material overlaying Quaternary swamp deposits. The depth to groundwater ranges from approximately five to eight feet below grade and is influenced by tidal effects. In general, groundwater underlying the LMMIA is unconfined and discharges to local waterways. Groundwater at the facility is saline and high in total dissolved solids, and is not used as a source of drinking water. The LMMIA is surrounded by brackish water lagoons with well-developed mangrove stands. Surface water bodies near the facility include Laguna Torrecilla and the Atlantic Ocean. Public recreation areas near the facility include public beaches and the Piñones State Forest.

11. For the purposes of this Order, the term "jet fuel" is defined as a highly refined mixture of petroleum distillates, of which kerosene is the primary component, used in the propulsion of jet aircraft.

12. Most of the jet fuel used at the LMMIA, by various PRPA tenants, arrives through an underground pipeline from the bulk fuels terminals located in Cataño, Puerto Rico. The jet fuel

is stored in aboveground tanks at the Fuel Storage Areas (or Fuel Farms) within the LMMIA (the former Texaco and Shell Fuel Farms, now the BP Fuel Farm and the Esso Fuel Farm) and distributed to individual airline terminal locations through a pressurized, pneumatically operated underground piping and hydrant fuel system (the "HFS") installed around 1954. Portions of this system have been modified, upgraded, and extended throughout subsequent years. Most of the HFS is owned by the PRPA. In general, the HFS includes the Fuel Storage Areas, the Underground Hydrant Line (comprising the main and auxiliary underground lines, joints, valves and other ancillary equipment), the Joint Cargo Hydrant Line (which connects the independent underground hydrant lines and is used by lessees in common with other parties operating the HFS), and approximately 3,300 linear feet of underground piping in the Southern portion of the Facility, known as the Kilo Line and CAF Line, owned by Respondent under a contract with PRPA.

13. The Kilo Line and CAF Line include four below-grade valves. Three of the valves are situated in concrete boxes. The boxes have no floor and are thus open to the underlying soil. Further, the pipeline entry and exit points in the boxes are not sealed and are thus open to the surrounding soil. The fourth valve has no box.

14. A 1994 report prepared by Ecosystems and Associates ("the 1994 Ecosystems Report") on behalf of PRPA documented numerous and substantial fuel releases and resultant contamination of soil and groundwater at the LMMIA. The report documented the presence of petroleum in several subsurface areas at the LMMIA, including, but not limited to, the former Texaco/Sun Oil/Sunoco Fuel Farm, the Reserve Forces Shop Auto Maintenance Building No. 6, and the former Shell Fuel Farm. The report further documented the 1991 removal of over 115,000 cubic yards of petroleum contaminated soil following the installation of new fuel lines beneath the aircraft parking ramp south of Terminal 2, and the 1992 ignition of a fire at the soil/air interface during the installation of steel support pilings for the control tower between Terminals 1 and 2. The report also documented the release of approximately 48,000 gallons of jet fuel over a period of time at the PRANG facility, which was subsequently addressed by PRANG.

15. On March 31, 2003, EPA issued an Order on Consent (the "2003 EPA Order on Consent") pursuant to Section 7003(a) of RCRA, 42 U.S.C. § 6973(a), to PRPA, Allied Aviation Services of Puerto Rico, Inc., ("Allied"), Esso Standard Oil S.A. Limited (Puerto Rico Division) d/b/a Esso Standard Oil Company (Puerto Rico) ("Esso"), BP Products North America, Inc., d/b/a Air BP Division ("BP"), the Shell Company (Puerto Rico) Ltd. ("Shell"), and Texaco Puerto Rico, Inc., ("Texaco"), (hereinafter collectively referred to as the "2003 Respondents"). Allied, Esso, and BP are currently lessees and operators of certain portions of the HFS. Shell and Texaco were past lessees and operators of certain portions of the HFS. The 2003 EPA Order on Consent requires the investigation of subsurface jet fuel contamination at and in the vicinity of the LMMIA, and the investigation of the HFS pipeline integrity at the LMMIA.

16. On March 25, 2008, a PRPA security inspector observed strong hydrocarbon odors emanating from a storm water channel south of the Kilo Line/CAF line junction. EPA and the Puerto Rico Environmental Quality Board ("EQB") were notified.

17. On March 26, 2008, EPA and EQB observed jet fuel in an adjacent manhole and directed PRPA to deploy containment booms in the stormwater channel and other locations.

18. On March 28, 2008, approximately 800 Gallons of jet fuel was observed by BP and Esso personnel in one of the below-grade valve boxes, the "FedEx Valve Box" located near the junction of the Kilo Line and CAF line, and subsequently removed by BP. On March 28, 2008, EQB performed a dye test that on March 31, 2008, revealed hydraulic continuity between the FedEx Valve Box and the storm water system in the vicinity of the FedEx Valve Box. PRPA subsequently reported that the Kilo Line and CAF Line had been integrity tested, the associated valve boxes inspected, all faulty equipment repaired, and the Kilo Line and CAF Line integrity confirmed.

19. PRPA reported that between March 27, 2008, and June 11, 2009, approximately 5,252 Gallons of jet fuel had been recovered from the FedEx Valve Box, and from containment booms and storm water catch basins in the vicinity of the FedEx Valve Box. PRPA further reported that its monitoring and jet fuel recovery activities in these areas are ongoing.

20. Inhalation, ingestion, or dermal absorption of jet fuel may cause significant adverse health effects in both humans and animals. Jet fuel is ultimately, but not readily, biodegradable, and is toxic to aquatic organisms.

21. The release of jet fuel at the Facility has created conditions that may endanger human health and the environment, including the degradation of soil and ground water quality, the potential degradation of surface water quality by contaminated groundwater, the potential exposure of humans and environmental receptors to contaminated soil and groundwater, and the risk of injury to personnel through fire, inhalation of jet fuel vapors, and dermal absorption of jet fuel.

22. When released to the environment, jet fuel is a solid waste, as that term is defined at Section 1004 of the Act, 42 U.S.C. § 6903(27).

23. The Respondent has contributed or is contributing to the handling or disposal of solid waste at the LMMIA.

24. The "handling" or "disposal" of solid waste at the LMMIA by Respondent, as those terms are defined in Sections 1004(3) and (33) of the Act, 42 U.S.C. §6903 (3) and (33), may present an imminent and substantial endangerment to health or the environment.

IV. DETERMINATION

25. Based on the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW, the Regional Administrator of EPA Region 2, upon receipt of evidence and information that the past and present handling and disposal of solid waste at the LMMIA may present an imminent and substantial endangerment to health and the environment, has determined that issuance of this Order is necessary to protect public health and the environment.

V. ORDER

26. Based on the foregoing FINDINGS OF FACT AND CONCLUSIONS OF LAW and the foregoing DETERMINATION, IT IS HEREBY ORDERED THAT:

The Respondent shall perform all actions required by this Order, and comply with all its provisions. Respondent shall fully cooperate with EPA representatives in carrying out the provisions of this Order.

VI. WORK TO BE PERFORMED, ACCEPTANCES, AND SCHEDULE

Posted Notice

27. At each area where work under this Order is performed (including, but not limited to, AOCs "7" – "10"), and at all times during such performance, Respondent shall cause the following NOTICE to be posted:

THIS AREA IS SUBJECT TO A
UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
ORDER
CONCERNING THE INVESTIGATION OF
SUBSURFACE CONTAMINATION

The Notice shall be in large lettering on a weather-resistant mounted sign at least three feet by five feet in size.

Subsurface Investigation Plan

28. Respondent shall, within forty-five (45) calendar days of the effective date of this Order, submit to EPA for its review and acceptance a draft written Subsurface Investigation Plan to delineate the vertical and horizontal extent of subsurface contamination with jet fuel and jet fuel degradation products (e.g., any products of biotic and/or abiotic degradation of jet fuel) in groundwater and soils at and in the vicinity of the Facility resulting from and/or related to Respondent's ownership of the Kilo Line, CAF Line, and/or ancillary equipment. The Subsurface Investigation Plan shall include an implementation schedule.

- a) Respondent shall join the Project Operating Committee that was established by the 2003 Respondents to conduct its ongoing subsurface investigation at the Facility. Respondent shall participate, to the degree necessary and practicable, as an active committee member with respect to integrating Respondent's obligations under this Order with the ongoing subsurface investigation.

- i) Respondent's Subsurface Investigation Plan shall define, at a minimum, two new Areas of Concern ("AOCs") for investigatory activities. Respondent shall conduct investigatory activities in these two new areas, as well as in existing AOCs "7," and "8," as previously defined in the ongoing subsurface investigation at the Facility. These two new AOCs shall be defined as Respondent's AOCs "9" and "10." AOC "9" shall be located to the east of the Kilo Line and north of the CAF Line. AOC "10" shall be located to the south of the Kilo Line and west of the eastern portion of the CAF Line. Respondent shall thereafter expand and/or supplement AOCs "9" and "10," as necessary, in any subsequent investigatory activities conducted pursuant to this Order.

29. EPA will review the Subsurface Investigation Plan and provide its written acceptance or modification, in whole or in part, to the Respondent. Unless otherwise specified by EPA, Respondent shall thereafter revise the Plan and shall within thirty (30) calendar days submit a revised Plan to EPA for review and acceptance. EPA will then notify Respondent of its acceptance or modification of the revised Plan in whole or in part. If EPA provides Respondent with such further modifications, Respondent shall within thirty (30) calendar days again revise the Plan and resubmit the Plan to EPA for review and acceptance. The revised Plan, as accepted by EPA in writing, shall become final. Once accepted by EPA, Respondent shall implement the Plan according to the schedule set forth in the Plan.

Subsurface Investigation Report

30. Respondent shall submit a written report to EPA within forty-five (45) calendar days of its completion of subsurface investigatory activities and related validation of analytical data (Respondent's "Subsurface Investigation Report"). The Subsurface Investigation Report shall fully document the methodology of Respondent's subsurface investigatory activities and describe in detail the vertical and horizontal extent of subsurface contamination with jet fuel and jet fuel degradation products in groundwater and soils at and in the vicinity of the Facility resulting from and/or related to Respondent's ownership of the Kilo Line, CAF Line, and/or ancillary equipment.

31. EPA will review the Subsurface Investigation Report and provide its written acceptance or modification, in whole or in part, to the Respondent. Unless otherwise specified by EPA, Respondent shall thereafter revise the Report and shall within thirty (30) calendar days submit a revised Report to EPA for review and acceptance. EPA will then notify Respondent of its acceptance or modification of the revised Report in whole or in part. If EPA provides Respondent with such further modifications, Respondent shall within thirty (30) calendar days again revise the Report and resubmit the Report to EPA for review and acceptance. The revised Report, as accepted by EPA in writing, shall become final.

Valve Box Replacement/Construction Plan

32. Respondent shall, within forty-five (45) calendar days of the effective date of this Order, submit to EPA for its review and acceptance a draft written plan (Respondent's "Valve Box Replacement/Construction Plan") for the replacement of the existing three Kilo Line/CAF Line valve boxes and the construction of a valve box for the fourth Kilo Line/CAF Line valve that has no box. The Plan shall specify, in detail, the construction of valve boxes that are sealed to

provide secondary containment in the event of a release of jet fuel from the valves. The Plan shall bear the seal of a professional engineer licensed to practice in the Commonwealth of Puerto Rico.

- a) The Valve Box Replacement/Construction Plan shall include an implementation schedule which Respondent shall coordinate, to the degree necessary and practicable, with investigatory activities being undertaken pursuant to this Order on Consent and the 2003 EPA Order on Consent.

33. EPA will review the Valve Box Replacement/Construction Plan and provide its written acceptance or modification, in whole or in part, to the Respondent. Unless otherwise specified by EPA, Respondent shall thereafter revise the Plan and shall within thirty (30) calendar days submit a revised Plan to EPA for review and acceptance. EPA will then notify Respondent of its acceptance or modification of the revised Plan in whole or in part. If EPA provides Respondent with such further modifications, Respondent shall within thirty (30) calendar days again revise the Plan and resubmit the Plan to EPA for review and acceptance. The revised Plan, as accepted by EPA in writing, shall become final. Once accepted by EPA, Respondent shall implement the Plan according to the schedule set forth in the Plan.

- a) All work performed pursuant to the Valve Box Replacement/Construction Plan, as accepted by EPA, shall be to a workmanlike standard and shall be field inspected and certified approved in writing by a professional engineer licensed to practice in the Commonwealth of Puerto Rico. The written certification shall bear the seal of the professional engineer and shall be provided to EPA by Respondent within ten (10) calendar days of completion of the work.

VII. EMERGENCY PROVISIONS

34. During the period between the effective date of this Order and the termination of this Order, Respondent shall implement emergency measures at and in the vicinity of the Facility to mitigate any potential or actual endangerment to human health or the environment resulting from or related to Respondent's activities pursuant to this Order and/or Respondent's ownership of the Kilo Line, CAF Line, and/or ancillary equipment.

35. Emergency measures pursuant to this Order may include, but shall not be limited to: i) the control of any subsurface migration of jet fuel, jet fuel degradation products, and/or groundwater contaminated with jet fuel and/or jet fuel degradation products and ii) the recovery of subsurface jet fuel, jet fuel degradation products, and/or soils and/or groundwater contaminated with jet fuel and/or jet fuel degradation products.

36. In the event that Respondent identifies a potential or actual endangerment to human health or the environment, Respondent shall verbally notify EPA immediately, and shall within forty eight (48) hours submit to EPA detailed written notification summarizing the immediacy and magnitude of the endangerment.

37. Respondent shall, within five (5) calendar days, or at an earlier date specified by EPA in its sole discretion, submit to EPA a Plan to mitigate the endangerment, including an implementation schedule. EPA will accept or, after consultation with Respondent, modify the Plan and/or schedule. Respondent shall thereafter implement the Plan as accepted or modified by EPA in accordance with the implementation schedule as accepted or modified by EPA.

38. In the event EPA determines, or accepts Respondent's determination, that activities in compliance or non-compliance with this Order may pose a potential or actual endangerment to human health or the environment, EPA may direct the Respondent to stop further implementation of this Order, or any portion of this Order, for such period of time as may be needed to mitigate any such endangerment.

39. Notwithstanding the above, Respondent may act as deemed appropriate, at its sole discretion and risk, without prior notification to or acceptance by EPA, to mitigate any potential or actual endangerment to human health or the environment. In that event, Respondent shall, within forty eight (48) hours submit to EPA detailed written notification summarizing the immediacy and magnitude of the endangerment and the measures taken by Respondent to mitigate the endangerment.

VIII. CERTIFICATIONS

40. All documents and reports provided to EPA pursuant to this Order shall be accompanied by the following Certification, and shall be dated and signed by a senior official of Respondent involved in the development of the report:

"I certify under penalty of law that this document [*Identify Document*] and all attachments being submitted were prepared under my direction or supervision in order to ensure that qualified personnel properly gathered, evaluated and prepared this submission. Based on my review, including my inquiry of the person or persons who prepared the submission, the information contained in this submission is to the best of my knowledge, true, accurate and complete. I am aware that there are significant potential penalties for submitting false information."

IX. RETENTION OF RECORDS

41. Respondent shall maintain all records relating to the Kilo Line, CAF Line, and ancillary equipment, and shall make such records available to EPA upon request. The Respondent shall also maintain all records pertaining to the work to be performed pursuant to this Order and shall make such records available to EPA upon request. Such records shall be maintained while this Order is in effect and for three (3) years following termination of this Order pursuant to Section XXIV below.

X. PROJECT COORDINATORS

42. EPA and Respondent shall designate a Project Coordinator ("PC"). Respondent shall notify EPA in writing, by no later than fifteen (15) calendar days after the effective date of this

Order, of the name, title, mailing address, and telephone numbers of its PC. Respondent, at its sole discretion, may also designate an alternate PC and, if so, shall supply contact information to EPA for any such alternate(s).

- a. Respondent may change its PC and/or Alternate PC at its sole discretion. Respondent shall inform EPA in writing should such change occur.
- b. EPA has designated Leonard Grossman as Project Coordinator, and Philip Flax as Alternate Project Coordinator.

XI. NOTICES

43. For purposes of this Order, all written communications, notices, or submissions pursuant to this Order shall be directed to individuals as specified by EPA and Respondent. EPA and the Respondent shall, with written advance notice, each have the right to change the individuals who are to receive such documents. EPA has designated the following recipients:

Leonard Grossman
U.S. Environmental Protection Agency, Region 2
RCRA Compliance Branch
290 Broadway
New York, New York 10007-1866

Philip Flax
U.S. Environmental Protection Agency, Region 2
RCRA Compliance Branch
290 Broadway
New York, New York 10007-1866

Lourdes del Carmen Rodríguez, Esq.
Assistant Regional Counsel
Office of Regional Counsel, Caribbean Team
U.S. Environmental Protection Agency
Centro Europa Building, Suite 417
1492 Ponce de León Avenue
San Juan, PR 00907

44. All written and verbal communications from EPA to the Respondent concerning this Order shall be directed to Respondent's designated PCs.

XII. EFFECTIVE DATE

45. The effective date of this Order shall be fifteen (15) calendar days after the date the Order is signed by the Regional Administrator, EPA Region 2, or such specific date not sooner than fifteen (15) calendar days after the Order is signed as may be specified by EPA in writing.

XIII. RESERVATION OF RIGHTS

46. EPA expressly reserves, without limitation, all of its statutory and regulatory powers, authorities, rights, remedies and defenses, both legal and equitable, including the right to seek injunctive relief, cost recovery, monetary penalties, or punitive damages. EPA may exercise its authority under the Comprehensive Environmental Response Compensation and Liability Act, as amended, ("CERCLA") to undertake removal or remedial actions.

47. This Order shall not be construed as a covenant not to sue, or as a release, waiver or limitation of any rights, remedies, defenses, powers and or authorities which EPA has under RCRA, CERCLA or any other statutory, regulatory or common law authority of the United States.

48. This Order shall not limit or otherwise preclude EPA from taking any additional legal action against Respondent, or other parties, should EPA determine that any such additional legal action is necessary or warranted.

49. Notwithstanding compliance with the terms of this Order, Respondent is not released from liability for the costs of any response actions taken by EPA. EPA reserves the right to seek reimbursement from Respondent for any costs incurred by the United States.

XIV. STIPULATED PENALTIES

50. Unless excused under the "Force Majeure and Excusable Delay" provision of this Order, Respondent shall pay a stipulated penalty for failure to comply with any requirement, term, or condition set forth in or required by this Order. The stipulated penalty for each non-complying act is as follows:

<u>Period of Failure to Comply</u>	<u>Penalty for Non-compliance Per Day</u>
1st through 30th day	\$375
31st through 90th day	\$750
91 st day and thereafter	\$1,500

- a. Stipulated penalties shall be paid by cashier's or certified check, payable to the Treasurer, United States of America, and mailed to the EPA - Region 2 (Regional Hearing Clerk), P.O. Box 360188M, Pittsburgh, Pennsylvania. Said payment(s) shall be identified as a stipulated penalty being paid pursuant to this Order and shall reference the Docket Number set forth on the title page of this Order.
- b. All stipulated penalties begin to accrue on the day each act of noncompliance with any requirement, term, or condition set forth in or required by this Order first takes place. Said stipulated penalties shall continue to accrue through, and including, the day on which any failure to comply with such requirement, term, or condition is remedied. Nothing herein shall preclude, or is intended to preclude, the simultaneous accrual of separate stipulated penalties for each separate act of noncompliance with this Order. Penalties shall accrue regardless of whether EPA

has notified Respondent of the act or acts of non-compliance, but need only be paid upon demand.

- c. After receipt of a demand from EPA for stipulated penalties pursuant to this Section of the Order, Respondent may within thirty (30) calendar days of such demand, provide EPA with a written explanation of why they believe the stipulated penalties are not appropriate for the act(s) of non-compliance cited by EPA. If Respondent elects not to submit such explanation, the stipulated penalties shall be paid within seventy-five (75) calendar days after receipt of the penalty demand.
- d. The Director of the Division of Enforcement and Compliance Assistance may, in her sole discretion, reduce or eliminate such stipulated penalties based on Respondent's written explanation as specified in subparagraph "c.," immediately above, or for good cause as determined by her. If the Division Director does not eliminate the stipulated penalties, then EPA will again notify Respondent that the original or reduced stipulated penalties must be paid by Respondent. Respondent shall pay the stipulated penalties as set forth in EPA's notice pursuant to this subsection within thirty (30) calendar days of its receipt of the notice.
- e. All penalties owed to EPA under this Section shall be due and owing as of the date of Respondent's receipt of the notice described in subparagraphs "c." or "d.," above. Interest shall also accrue on any amount not paid when due at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. EPA's delay or failure to send such notice in no way affects EPA's right to collect such funds.
- f. If Respondent fails to pay stipulated penalties as required under this Order, EPA may refer this matter to the U.S. Department of Justice or Department of Treasury for collection under applicable law. Nothing in this section, however, limits, or shall be construed as limiting, any rights or remedies available to EPA to enforce this Order and to seek compliance with the terms and conditions of this Order or any other applicable law or regulation.

XV. NON-RELEASE OF OTHER CLAIMS AND PARTIES

51. Nothing in this Order shall constitute, or be construed to constitute, a release from any claim, cause of action or demand in law or equity brought by EPA against any person, firm, partnership, or corporation for any liability it may have arising out of, or relating in any way to, the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituent, hazardous substance, solid waste, hazardous waste, pollutant, or contaminant found at, taken to, taken from, or emanating from the areas of the Facility that are the subject of the Order.

XVI. PUBLIC PARTICIPATION

52. EPA reserves the right, in its sole discretion, to provide for public notice, opportunity for public meeting in the affected area, and a reasonable opportunity for public review and comment. Following receipt of a written request from EPA, the Respondent shall make any non-privileged documents developed pursuant to the requirements of this Order available for public review and comment. Additionally, as requested by EPA, the Respondent shall assist EPA in effectuating the above-described public notice, public meeting and/or public review and comment.

XVII. INDEMNIFICATION OF THE UNITED STATES GOVERNMENT

53. To the extent authorized by law, Respondent shall indemnify, save and hold harmless the United States Government, its agencies, departments, agents, and/or employees, from any and all claims or causes of action arising from or on account of acts or omissions of Respondent or its agents, independent contractors, receivers, trustees, subcontractors or successors and/or assigns in carrying out activities required by this Order. This indemnification shall not be construed as in any way affecting or limiting the rights or obligations of Respondent or the United States under its various contracts or statutes.

XVIII. OTHER APPLICABLE LAWS

54. Respondent shall undertake all actions required by this Order in accordance with the requirements of all applicable local, commonwealth, state and federal laws and regulations. Respondent shall obtain all permits or acceptances necessary to perform the work required by this Order.

XIX. SEVERABILITY

55. If any provision or authority of this Order or the application of this Order to any party or circumstance is found to be invalid, or is temporarily stayed, the remainder of this Order shall remain in force and shall not be affected thereby.

XX. FORCE MAJEURE AND EXCUSABLE DELAY

56. Respondent shall perform all the requirements of this Order within the time limits set forth, accepted, or established herein, unless the performance is prevented or delayed solely by events which constitute a force majeure. A force majeure is defined as any event arising from causes not reasonably foreseeable and beyond the control of the Respondent which could not be overcome by due diligence and which delays or prevents performance by a date required by this Order. Such events do not include unanticipated or increased costs of performance, changed economic circumstances, normal precipitation events, or failure to obtain federal, commonwealth, or local permits.

57. Respondent shall notify the EPA PC and EPA Alternate PC in writing within fifteen (15) calendar days after becoming aware of any event which is known, or should be known, to have constituted a force majeure. Such notice shall detail the estimated length of delay, its causes,

measures taken or to be taken to minimize the delay, and an estimated timetable for implementation of such measures. Respondent must adopt all reasonable measures to avoid and minimize the delay. Failure to comply with the notice provision of this section shall constitute a waiver of Respondent's right to assert a force majeure and may be grounds for EPA to deny Respondent an extension of time for performance.

58. After receiving notice that Respondent is invoking the force majeure provisions of this Order, EPA shall respond in writing indicating either EPA's agreement that the event constitutes a force majeure or its disagreement and the reasons therefore.

59. If EPA and Respondent agree that a force majeure has occurred, the time for performance may be extended, upon EPA acceptance, for a period equal to the delay resulting from such circumstances. This shall be accomplished through written amendment to this Order, or modifying the schedule in a previously accepted plan. Such an extension or modification will not alter the schedule for performance or completion of any other tasks required by this Order unless these are also specifically altered in accordance with the Modification Section XXIII, below, or by modifying a previously accepted plan.

60. In the event that EPA and Respondent cannot agree that any delay or failure has been or will be caused by a force majeure, or if there is no agreement on the length of the extension, the dispute will be resolved in accordance with the Dispute Resolution provisions contained in this Order.

XXI. ON-SITE AND OFF-SITE ACCESS

61. Until this Order is terminated, Respondent shall permit EPA representatives and/or authorized designees (including, but not limited to, employees, agents, contractors, subcontractors, and/or consultants) to enter and freely move about the LMMIA for, but not limited to, the following purpose(s): observing activities at the Facility, interviewing personnel, conducting sampling or monitoring, taking photographs, and verifying information or data that have been submitted.

- a) Respondent shall make available to EPA representatives and/or authorized designees for inspection, copying, or photographing, all records, files, photographs, documents, or any other writing, including monitoring and sampling data that pertain to any work undertaken pursuant to this Order.

62. To the extent that work required by this Order must be performed on property not owned or controlled by the Respondent, and access is needed for more than conducting inspections, Respondent shall use its best efforts to obtain "Site Access Agreements" to perform such work within thirty (30) calendar days of the date Respondent becomes aware or should be aware of the need to perform such work. Any such access agreement shall provide for access by EPA representatives and/or authorized designees. In the event that Site Access Agreements are not obtained within the thirty (30) day period, Respondent shall notify EPA in writing, documenting its best efforts to obtain such agreements.

63. Nothing in this Order shall be construed to limit or otherwise affect EPA's right of access and entry pursuant to any applicable laws and regulations, including the Act and CERCLA.

64. Nothing in this Order shall be construed to limit or otherwise affect Respondent's liabilities and obligations to perform corrective action, including corrective action beyond the Facility boundary, notwithstanding any lack of access. EPA may determine that additional on-site measures must be taken to address releases beyond the Facility if access to off-site areas cannot be obtained.

XXII. NO FINAL AGENCY ACTION

65. Notwithstanding any other provision of this Order, no action or decision by EPA pursuant to this Order, including without limitation, decisions of the Regional Administrator, EPA Region 2, or any authorized representative of EPA, shall constitute final agency action giving rise to any rights of judicial review prior to EPA's initiation of a judicial action for a violation of this Order, which may include an action for penalties, an action to compel Respondent's compliance with the terms and conditions of this Order, or such other relief as may be available at law. In any action brought by EPA for a violation of this Order, Respondent shall bear the burden of proving that EPA's action was arbitrary and/or capricious and not in accordance with law, or this Order. In any such action, EPA shall bear the burden of proving that Respondent has violated a term or terms of this Order.

XXIII. MODIFICATION

66. This Order may be amended by Respondent and EPA. Such amendment(s) shall be in writing, shall first be signed by Respondent, and shall become effective upon the date of signature by the Regional Administrator of EPA Region 2.

- a) Notwithstanding the above, EPA's and Respondent's Project Coordinators may agree to changes in the scheduling of events. Any such changes must be accepted in writing by EPA.

67. No informal advice, guidance, suggestions, or comments by EPA regarding reports, plans, specifications, schedules, and any other writing submitted by Respondent will be construed as an amendment or modification to this Order.

XVIII. DISPUTE RESOLUTION

68. Respondent and EPA shall use its best efforts to informally and in good faith resolve all disputes and differences of opinion. Notwithstanding, if Respondent disagrees, in whole or in part, with any determination, directive or other decision made by EPA pursuant to this Order, Respondent shall notify EPA in writing of such disagreement and the basis (bases) therefore within fifteen (15) calendar days of receipt of EPA's determination, directive or decision. The notice shall set forth the specific points of the dispute, Respondent's position, the basis (bases) for Respondent's position, and any matters the Respondent considers necessary for EPA's determination. Within thirty (30) calendar days of EPA's receipt of such written notice, or by

such other date as may be agreed upon by the parties, EPA, acting through the Director, Division of Enforcement and Compliance Assistance, EPA Region 2, will provide Respondent its decision on the pending dispute, which decision shall be binding on the parties to this Order. The parties may continue to confer and to use informal efforts to resolve the dispute during the period that EPA's final determination is pending.

69. The existence of a dispute as defined herein, and EPA's consideration of such matters as placed into dispute shall excuse, toll, or suspend during the pendency of the dispute resolution process the compliance obligation or deadline which is in dispute and any other obligation or deadline which is demonstrably dependent on the matters in dispute, and EPA will not seek to assess a penalty for noncompliance with the obligation or deadline for the period of time during which the obligation or deadline was excused, tolled, or suspended, regardless of the decision on the dispute. No obligation or deadline shall be excused, tolled, or suspended, unless Respondent exercises due diligence to resolve the dispute.

XXIV. TERMINATION

70. This Order and all of its terms and provisions shall remain in effect until all of the activities called for by the Order are completed and Respondent is so notified in writing by EPA. Such notice will be signed by the Regional Administrator, EPA Region 2. Respondent may request that EPA provide Respondent with such notice, and shall supply EPA with such information, including certifications, as EPA may specify. Upon Respondent's request, EPA will also notify Respondent in writing confirming the appropriate completion of discrete tasks under the Order. In each instance, such confirmation by EPA will be based on the information then available to EPA, including reports filed by Respondent pursuant to the terms of the Order.

XXV. ENFORCEMENT

71. Respondent's failure to comply with any provision of this Order may be considered a violation of this Order. Such violation may give rise to an enforcement action pursuant to Section 7003(b) of the Act, 42 U.S.C. § 6973(b), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. Section 3701 *et seq.* Nothing herein shall preclude EPA from taking any additional enforcement actions, and/or such other actions as it may deem necessary for the abatement or prevention of a potential or actual imminent endangerment to human health or the environment arising from conditions at the Facility that are the subject of the Order. Nor shall EPA be precluded from taking any such other enforcement actions under the Act and/or other environmental laws, as EPA may deem necessary based on additional information about conditions at the Facility.

XVIII. GENERAL PROVISIONS

72. Nothing in this Order constitutes a satisfaction or release from liability with respect to any conditions or claims arising as a result of past, current or future operations, ownership or use of the Facility or other locations by the Respondent, its agents, officials, successors or assigns. Nothing in this Order affects any right, claim, interest, defense or cause of action of EPA with respect to the Respondent or any third parties.

73. Respondent shall maintain all records relating to this Order during the period in which the Order is in effect and for three (3) years following its termination pursuant to Section XXIV herein. Respondent shall make such records available to EPA representatives and/or authorized designees upon request.

XIX. CONSENT

74. Respondent consents to and agrees not to contest EPA's jurisdiction to issue this Order. In addition, whether brought in an administrative or judicial proceeding, Respondent consents to and agrees not to contest EPA's jurisdiction to enforce or compel compliance with any term of this Order.

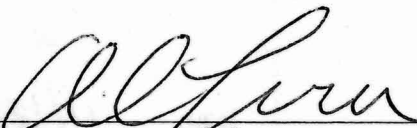
75. Respondent neither admits nor denies the EPA Findings of Fact and Conclusions of Law stated herein, and this Order on Consent is not intended and shall not be construed as an admission relating to violation of any law or regulation.

76. Finding this Order to be accurate and reasonable, Respondent consents to its issuance and its terms, and agrees to undertake all actions required by the terms and conditions of this Order. Respondent consents to the issuance of this Order, as an Order, pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, and explicitly waives any rights it may have to request a hearing on this matter.

77. Respondent agrees not to contest and agrees to waive any defense concerning the validity of this Order, or any particular provision contained herein, except as otherwise provided in this Order on Consent.

The signatory to this Order for Respondent certifies that he or she is fully authorized to sign this Order on behalf of Respondent.

Respondent: Caribbean Air Facilities, Inc.

By: 
Signatory's Name (Print)

Date: 5 August 2009

President
Signatory's Title (Print)

It is so Ordered:

By:



George Pavlou
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 2
290 Broadway
New York, New York 10007-1866

Date:

11/18/09